

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN ASSEMBLY JULY 1, 2010

AMENDED IN ASSEMBLY JUNE 21, 2010

AMENDED IN SENATE APRIL 19, 2010

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 1093**

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**Introduced by Senator Wiggins**

~~(Coauthor: Assembly Member Evans)~~

February 17, 2010

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An act to amend Sections 8276.2 and 8276.4 of, and to add Section 8276.5 to, the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1093, as amended, Wiggins. Dungeness crab: pilot program.

(1) Existing law establishes the Ocean Protection Council and requires the council to, among other things, coordinate activities of state agencies that are related to the protection and conservation of coastal waters and ocean ecosystems to improve the effectiveness of state efforts to protect ocean resources within existing fiscal limitations.

Existing law requires the council to make a grant, upon appropriation of funding by the Legislature, for the development and administration of a Dungeness crab task force, and specifies the membership of the task force. Existing law requires the task force to cease to exist on January 1, 2011.

This bill would extend that date to January 1, ~~2014~~ 2015.

(2) Existing law authorizes the Director of Fish and Game to authorize one or more operators of commercial fishing vessels to take and land a limited number of Dungeness crab for the purpose of quality testing according to a testing program and prohibits the sale of crab taken pursuant to the testing program, except for edible crab meat, which may be used for charitable purposes.

This bill would instead allow the crab taken pursuant to the testing program to be sold, provided the proceeds of the sale are allocated to legitimate costs of the testing program, or used for charitable purposes.

(3) Existing law, until January 1, 2011, authorizes the placement of restrictions on a person's eligibility to take crab in state waters and offshore for commercial purposes.

This bill would ~~extend the operation of this authorization to January 1, 2014. The bill delete the sunset date for this authority, and would~~ also authorize the director to institute a pilot program for Dungeness crab trap limits for all California ~~permitholders~~ *permits*. The bill would require the pilot program to contain specified requirements, and prohibit the pilot program from being implemented, modified, eliminated, or added to without at least  $\frac{2}{3}$  of the non ex officio members of the Dungeness crab task force voting in favor.

(4) Existing law requires all money collected under the Fish and Game Code, or under any other law relating to the protection and preservation of birds, mammals, fish, reptiles, or amphibians, to be deposited into the Fish and Game Preservation Fund, unless otherwise provided.

The bill would require trap tag fees collected pursuant to the pilot program to be deposited in the Dungeness Crab Account of the Fish and Game Preservation Fund, created by this bill, and moneys in the account would be continuously appropriated to the department for purposes of administering the pilot program. The bill would authorize the department to borrow money from the General Fund for purposes of meeting the necessary expenses of initial organization and operation of the pilot program.

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 8276.2 of the Fish and Game Code is  
2 amended to read:

1     8276.2. (a) The director may order a delay in the opening of  
2 the Dungeness crab fishery after December 1 in Districts 6, 7, 8,  
3 and 9 in any year. The delay in the opening shall not be later than  
4 January 15 of any year.

5     (b) On or about November 1 of each year, the director may  
6 authorize one or more operators of commercial fishing vessels to  
7 take and land a limited number of Dungeness crab for the purpose  
8 of quality testing according to a testing program conducted by, or  
9 on behalf of, the Pacific States Marine Fisheries Commission or  
10 an entity approved by the department. The department shall not  
11 approve a testing program unless it is funded by the entity  
12 authorized to conduct the testing program. Crab taken pursuant to  
13 this section may be sold, provided the proceeds of the sale are  
14 allocated to legitimate costs of the testing program as determined  
15 by the director, or used for charitable purposes.

16     (c) The director shall order the opening of the Dungeness crab  
17 season in Districts 6, 7, 8, and 9 on December 1 if the quality tests  
18 authorized in subdivision (b) indicate the Dungeness crabs are not  
19 soft-shelled or low quality. The entity authorized to conduct the  
20 approved testing program may test, or cause to be tested, crabs  
21 taken for quality and soft shells pursuant to the approved testing  
22 program. If the tests are conducted on or about November 1 and  
23 result in a finding that Dungeness crabs are soft-shelled or low  
24 quality, the director shall authorize a second test to be conducted  
25 on or about November 15 pursuant to the approved testing program.  
26 If the second test results in a finding that Dungeness crabs are  
27 soft-shelled or low quality, the director may order the season  
28 opening delayed for a period of 15 days and may authorize a third  
29 test to be conducted on or about December 1. If the third test results  
30 in a finding that Dungeness crabs remain soft-shelled or of low  
31 quality, the director may order the season opening delayed for a  
32 period of an additional 15 days and authorize a fourth test to be  
33 conducted. This procedure may continue to be followed, except  
34 that no tests shall be conducted after January 1 for that season, and  
35 the season opening shall not be delayed by the director later than  
36 January 15.

37     (d) This section shall become inoperative on April 1, 2012, and,  
38 as of January 1, 2013, is repealed, unless a later enacted statute  
39 that is enacted before January 1, 2013, deletes or extends the dates  
40 on which it becomes inoperative and is repealed.

SEC. 2. Section 8276.4 of the Fish and Game Code is amended to read:

8276.4. (a) The Ocean Protection Council shall make a grant, upon appropriation of funding by the Legislature, for the development and administration of a Dungeness crab task force. The membership of the Dungeness crab task force shall be comprised of all of the following:

(1) Two members representing sport fishing interests.

(2) Two members representing crab processing interests.

(3) One member representing commercial passenger fishing vessel interests.

(4) Two ex officio members representing nongovernmental organization interests.

(5) One ex officio representative of Sea Grant.

(6) Two ex officio members representing the department.

(7) Seventeen members representing commercial fishery interests, elected by licensed persons possessing valid Dungeness crab permits in their respective ports and production levels, as follows:

(A) Four members from Crescent City.

(B) One member from Trinidad.

(C) Two members from Eureka.

(D) Two members from Fort Bragg.

(E) Two members from Bodega Bay.

(F) Two members from San Francisco.

(G) Two members from Half Moon Bay.

(H) One member from ports south of Half Moon Bay.

(I) One member who has a valid California nonresident crab permit.

(b) For ports with more than one representative, elected members and their alternates shall represent both the upper and lower, and in some cases middle, production levels. Production levels shall be based on the average landing during the previous five years, of valid crab permit holders who landed a minimum of 25,000 pounds of crab during the same period.

(c) The Dungeness crab task force shall do all of the following:

(1) Under the guidance of a professional facilitator hired by the Ocean Protection Council for this purpose, review and evaluate Dungeness crab management measures with the objective of making recommendations to the Joint Committee on Fisheries and

1 Aquaculture, the department, and the commission no later than  
2 January 15, 2010.

3 (2) Make recommendations, including, but not limited to, the  
4 need for a permanent Dungeness crab advisory committee, refining  
5 sport and commercial Dungeness crab management, establishing  
6 a Dungeness crab marketing commission, and the need for statutory  
7 changes to accomplish task force objectives.

8 (3) In considering Dungeness crab management options,  
9 prioritize the review of pot limit restriction options, harvest  
10 allocation, current and future sport and commercial fishery effort,  
11 season modifications, essential fishery information needs, and  
12 short- and long-term objectives for improved management.

13 (d) The task force may establish subcommittees of specific user  
14 groups from the task force membership to focus on issues specific  
15 to sport fishing, commercial harvest, or crab processing. The  
16 subcommittees shall report their recommendations, if any, to the  
17 task force.

18 (e) The Ocean Protection Council may include in a grant funding  
19 to cover department staffing costs, as well as task force participant  
20 travel.

21 (f) A recommendation shall be forwarded to the Joint Committee  
22 on Fisheries and Aquaculture, the department, and the commission  
23 upon an affirmative vote of at least two-thirds of the task force  
24 members.

25 (g) The task force shall cease to exist on January 1, ~~2014~~ 2015.

26 (h) Eligibility to take crab in state waters and offshore for  
27 commercial purposes may be subject to restrictions, including, but  
28 not limited to, restrictions on the number of traps utilized by that  
29 person, if any of the following occur:

30 (1) A person holds a *California* Dungeness crab permit with  
31 *California* landings of less than 5,000 pounds between November  
32 15, 2003, and July 15, 2008, inclusive, *as reported in California*  
33 *landings receipts*.

34 (2) A person has purchased a *California* Dungeness crab permit  
35 on or after July 15, 2008, from a permitholder ~~who landed~~ *whose*  
36 *California landings were* less than 5,000 pounds between  
37 November 15, 2003, and July 15, 2008, inclusive, *as reported in*  
38 *California landings receipts*.

39 (3) The director institutes a pilot program for Dungeness crab  
40 trap limits pursuant to Section 8276.5.

~~(i) This section shall remain in effect only until January 1, 2014, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2014, deletes or extends that date, or it is rendered inoperative by commission regulations.~~

SEC. 3. Section 8276.5 is added to the Fish and Game Code, to read:

8276.5. (a) In accordance with paragraph (1) of subdivision (b), the director may institute a pilot program for Dungeness crab trap limits for all California ~~permitholders~~ *permits*. Except as provided in paragraph (2) of subdivision (b), the pilot program shall include all of the following requirements:

(1) The program shall contain seven tiers of Dungeness crab trap limits based on California landings *receipts under California permits* between November 15, 2003, and July 15, 2008, as follows:

(A) The ~~55-vessels~~ *California permits* with the highest *California* landings shall receive a maximum allocation of 500 trap tags.

(B) The ~~55-vessels~~ *California permits* with the next highest *California* landings to those in subparagraph (A) shall receive a maximum allocation of 450 trap tags.

(C) The ~~55-vessels~~ *California permits* with the next highest *California* landings to those in subparagraph (B) shall receive a maximum allocation of 400 trap tags.

(D) The ~~55-vessels~~ *California permits* with the next highest *California* landings to those in subparagraph (C) shall receive a maximum allocation of 350 trap tags.

(E) The ~~55-vessels~~ *California permits* with the next highest *California* landings to those in subparagraph (D) shall receive a maximum allocation of 300 trap tags.

(F) The ~~172-vessels~~ *remaining California permits* with the next highest *California* landings to those in subparagraph (E), *which are not described in paragraph (1) or (2) of subdivision (h) of Section 8276.4*, shall receive a maximum allocation of 250 trap tags.

~~(G) The final 141 vessels with the lowest landings shall receive a maximum allocation of 175 trap tags.~~

*(G) The California permits described in paragraphs (1) and (2) of subdivision (h) of Section 8276.4 shall receive a maximum allocation of 175 trap tags.*

(2) The department shall do either or both of the following:

1 (A) Obtain new funding to cover the costs of the pilot program  
2 from the council or other funding sources.

3 (B) Collect a fee for each trap tag issued pursuant to paragraph  
4 (1) that covers the pro rata share of costs of the pilot program,  
5 including, but not limited to, informing permitholders of the  
6 program, collecting the fees, acquiring and sending trap tags to  
7 permitholders, and monitoring the results of the program.

8 ~~(3) The Dungeness crab task force shall choose members from~~  
9 ~~the task force to form a hardship subcommittee to consider revising~~  
10 ~~upward any trap tag allocation based on evidence presented by a~~  
11 ~~permitholder that his or her landings during the period between~~  
12 ~~November 15, 2003, and July 15, 2008, were reduced as a result~~  
13 ~~of unusual circumstances and that these circumstances constitute~~  
14 ~~an unfair hardship, taking into account the overall landings history~~  
15 ~~of the permitholder.~~

16 ~~(4) The director shall not institute a pilot program for a period~~  
17 ~~longer than two years.~~

18 *(3) An individual may appeal a trap tag allocation received*  
19 *pursuant to paragraph (1) to the director on a permit-by-permit*  
20 *basis for the purpose of revising upward or downward any trap*  
21 *tag allocation based on evidence that a permit's California*  
22 *landings during the period between November 15, 2003, and July*  
23 *15, 2008, inclusive, were reduced as a result of unusual*  
24 *circumstances and that these circumstances constitute an unfair*  
25 *hardship, taking into account the overall California landings*  
26 *history as indicated by landing receipts associated with the permit.*  
27 *The director shall initiate the appeal process within 12 months of*  
28 *receiving an appeal request. The appeal shall be heard and decided*  
29 *by an administrative law judge of the Office of Administrative*  
30 *Hearings, whose decision shall constitute the final administrative*  
31 *decision. An individual requesting an appeal shall pay all expenses*  
32 *associated with the appeal process described in this paragraph.*

33 *(4) The director shall not institute a pilot program for*  
34 *Dungeness crab trap tags for a period longer than 3 years unless*  
35 *a longer period is authorized by a two-thirds vote of the non ex*  
36 *officio members of the Dungeness crab task force.*

37 (5) Unless new funding is made available specifically for  
38 enforcement of the pilot program, the department shall not *be*  
39 *required* to expend more time or funds on the enforcement of the  
40 pilot program than is normally accorded to the crab fishery.

1     (6) *A Dungeness crab trap that is fished shall contain a trap*  
2 *tag that is fastened to the first buoy.*

3     (7) *The director shall impose penalties and fines for*  
4 *noncompliance with the requirements of the pilot program.*

5     ~~(6)~~

6     (8) With assistance from the council, and if funding is available,  
7 the department shall ~~monitor~~ *report on* the results of the pilot  
8 program.

9     (b) (1) Prior to implementing the pilot program, the director,  
10 with the assistance of the council, shall seek the concurrence of  
11 the Dungeness crab task force. The program shall not be  
12 implemented without at least two-thirds of the non ex officio  
13 members of the Dungeness crab task force voting in favor of  
14 concurrence. Dungeness crab task force nonconcurrence may be  
15 based on any factor or factors the task force considers significant,  
16 including, but not limited to, the amount of the proposed fee  
17 collected pursuant to subparagraph (B) of paragraph (2) of  
18 subdivision (a).

19     (2) The pilot program shall not be modified, eliminated, or added  
20 to without the concurrence of at least two-thirds of the non ex  
21 officio members of the Dungeness crab task force voting in favor.

22     (c) The Dungeness Crab Account is hereby established in the  
23 Fish and Game Preservation Fund and the fees collected pursuant  
24 to subparagraph (B) of paragraph (2) of subdivision (a) shall be  
25 deposited in that account. Notwithstanding Section 13340 of the  
26 Government Code, the money in the account is continuously  
27 appropriated, without regard to fiscal years, to the department for  
28 purposes of administering the pilot program.

29     (d) If the director implements a pilot program, for purposes of  
30 meeting the necessary expenses of initial organization and  
31 operation of the pilot program until fees may be collected pursuant  
32 to subparagraph (B) of paragraph (2) of subdivision (a), or other  
33 funding sources may be received, the department may borrow  
34 money as needed for these expenses from the General Fund in the  
35 State Treasury. The borrowed money shall be repaid with interest  
36 within one year from the fees collected, or other funding sources  
37 received, as provided in this section.

38     (e) (1) It is the intent of the Legislature that the department,  
39 the council, and the Dungeness crab task force work with the  
40 Pacific States Marine Fisheries Commission and the Tri-state



1 Dungeness Crab Commission to move the fair start line south to  
2 the border of California and Mexico.

3 (2) For purposes of this subdivision, “fair start line” means the  
4 boundary line of a specific region fishing vessels are required to  
5 commit to fishing for a period of time prior to being able to leave  
6 that region to go fish another area.

7 (f) For purposes of this section, “council” means the Ocean  
8 Protection Council established pursuant to Section 35600 of the  
9 Public Resources Code.

O